

## REMARKS/ARGUMENTS

Examiner Erden is thanked for the thorough Office Action.

In that office action, restriction was required to one of two stated Inventions under 35 U.S.C. 121. The Inventions stated are Group I – Claims 28-35 to a semiconductor device, classified in class 257, subclass 408+ and Group II - Claims 1-27 to a process, classified in Class 438, subclass 301.

### **Provisional election**

Applicant provisionally elects to be examined the Invention described by the Examiner as Group II - Claims 1-27 drawn to a process classified in Class 438, subclass 301. This election is made with traverse of the requirement under 37 C.F.R.1.143 for the reasons given in the following paragraphs.

### **Respectful Request To Reconsider The Requirement For Restriction**

The Examiner is respectfully requested to reconsider the Requirement for Restriction given in the Office Action. The Examiner gives the reason for the distinctness of the two inventions as (1) that the process as claimed can be used to make other and materially different products or (2) that the product as claimed can be made by another and materially different process (MPEP 806.05(f)).

The office action, page 2, 2<sup>nd</sup> paragraph, states that "in claim 15, gate structure could have a longer channel width".

**MPEP 806.05(f) states:**

**806.05(f) Process of Making and Product Made - Distinctness**

A process of making and a product made by the process can be shown to be distinct inventions if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products; or (B) that the product as claimed can be made by another and materially different process.

Allegations of different processes or products need not be documented.

A product defined by the process by which it can be made is still a product claim (In re Bridgeford, 357 F.2d 679, 149 USPQ 55 (CCPA 1966)) and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another materially different process; defining the product in terms of a process by which it is made is nothing more than a permissible technique that applicant may use to define the invention.

If applicant convincingly traverses the requirement, the burden shifts to the examiner to document a viable alternative process or product, or withdraw the requirement.

To support the restriction, the office action, page 2, 2<sup>nd</sup> paragraph, states that "in claim 15, gate structure could have a longer channel width". However, applicant does not understand and does not agree that this statement supports either of the requirement (A) or (B) in MPEP 806.05( f)

- (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products;
- or (B) that the product as claimed can be made by another and materially different process.

The Office action statement, "in claim 15, gate structure could have a longer channel width", is very speculative and really not material. Furthermore, the Office action

has not discussed the reasons for restriction of the main parent claims (device) 28, and (process) 1, 23.

Furthermore, the search must cover both the method class/subclass and the product class/subclass in addition to other related classes/subclasses to provide a complete and adequate search. The fields of search for the Group I and Group II inventions are clearly and necessarily co-extensive.

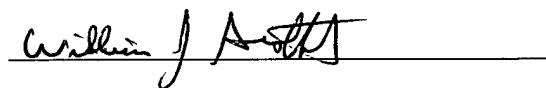
In addition, it is respectfully suggested that these reasons are insufficient to place the additional cost of a second Patent Application upon the Applicants. Therefore, it is respectfully requested that the Examiner withdraw this restriction requirement for these reasons.

### **CONCLUSION**

Withdrawal of the Restriction Requirement and the Allowance of the present Patent Application is requested. Allowance of all claims is requested. Issuance of the application is requested.

It is requested that the Examiner telephone the undersigned attorney at (215) 670-2455 should there be anyway that we could help to place this Application in condition for Allowance.

Respectfully submitted,



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